

## **APPENDIX B**

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### **Streambed Alteration Agreement MOU and Master List of Terms and Conditions**

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DEPARTMENT OF FISH AND GAME AND  
THE SISKIYOU RESOURCE CONSERVATION DISTRICT  
REGARDING THE SCOTT RIVER WATERSHED-WIDE  
STREAMBED ALTERATION AGREEMENT PROGRAM**

**I. RECITALS**

WHEREAS, the Legislature has declared that the protection and conservation of the State of California's fish and wildlife resources are of utmost public interest;

WHEREAS, the protection and conservation of fish and wildlife resources depend largely upon the preservation of the quality and quantity of the habitat that sustain them;

WHEREAS, the Department of Fish and Game ("Department") is the trustee for the state's fish and wildlife resources and responsible for administering and enforcing Fish and Game Code section 1600 *et seq.*;

WHEREAS, Fish and Game Code section 1602 requires an entity to notify the Department before beginning a project that will substantially obstruct or divert the natural flow of a river, stream, or lake; substantially change the bed, channel, or bank, of a river, stream, or lake; use any material from the bed, channel, or bank of a river, stream, or lake; or result in the deposition or disposal of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, and requires the Department to prepare a Streambed Alteration Agreement ("Agreement") if it determines the project could substantially adversely affect a fish or wildlife resource;

WHEREAS, the Siskiyou Resource Conservation District ("SQRCD") works in partnership with various parties to provide technical assistance and cost-sharing to private landowners to assist them with conservation projects on their property and to reduce erosion and sedimentation, in an effort to protect surrounding natural resources;

WHEREAS, SQRCD has been working closely with local community groups to create watershed plans and to protect and improve the biological functioning of their watersheds and natural resources while maintaining the economic viability of agriculture, and has been identified as an appropriate organization to assist local landowners in implementing those plans;

WHEREAS, the Department, with SQRCD's assistance, has developed the Scott River Watershed-wide Permitting Program ("Permitting Program"), which is designed to implement key recovery tasks for coho salmon and ensure that participants are in

compliance with Fish and Game Code section 1600 *et seq.* and the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*);

WHEREAS, the Department, with SQRCD's assistance, has developed a Streambed Alteration Agreement Program ("Program") as part of the Permitting Program to coordinate and simplify the process for agricultural water diverters in the Scott River watershed to comply with Fish and Game Code section 1600 *et seq.*;

WHEREAS, as part of the Program, the Department, with SQRCD's assistance, has prepared a Master List of Terms and Conditions for Streambed Alteration Agreements Issued Under the Scott River Watershed-Wide Permitting Program ("MLTC"), attached hereto as Attachment 1, that covers agricultural water diversions and other agricultural activities in the Scott River watershed; any projects directly related to such diversions; and restoration activities implemented by SQRCD, and includes general and specific measures that the Department and SQRCD agree are necessary to protect fish and wildlife resources that may be substantially adversely affected by such diversions or other agricultural activities and related projects, and restoration activities;

WHEREAS, the Department will prepare and approve or certify an environmental document in accordance with the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 *et seq.*) for the Permitting Program before issuing Agreements under the program; and

WHEREAS, the purpose of this MOU is to describe the Program and the Department's and SQRCD's roles and responsibilities under the Program;

NOW, THEREFORE, THE DEPARTMENT AND SQRCD AGREE THAT:

## II. PROGRAM ELIGIBILITY

A. The Program shall be limited to the activities described in Section III (Covered Activities) in Attachment 1.

B. SQRCD and each agricultural water diverter who is eligible for and wants to participate in the Program ("participant") shall obtain a separate Agreement through the Program by including the information in Section III below.

## III. PROGRAM PROCESS

A. It is the sole responsibility of the participant to fill out and submit to the Department a Program Notification Package (notification). The participant may submit the completed notification to SQRCD for assistance and/or review. If SQRCD

determines that the notification should be modified, it shall describe for the participant the changes that should be made to the notification and offer to review the notification again after it is modified. If SQRCD determines that the notification does not need to be modified, it shall advise the participant to submit the notification to the Department. SQRCD shall initial and date any notification it recommends for submittal to the Department.

B. SQRCD's role in regard to reviewing and commenting on a participant's notification shall be advisory only. SQRCD shall not be responsible for a participant's failure to submit a notification to SQRCD for its review before it is submitted to the Department: the information included in the notification; or the completeness of the notification.

C. Within 15 days of receiving a notification, the Department will confirm that the project is covered under the Program. If the Department determines the project is not covered under the Program, the Department shall explain to the participant in writing that the project is not covered, and that if the participant wants the Department to process the notification outside of the Program, the participant will need to submit a notification fee to the Department within 30 days from the date of the letter. If the Department does not receive the notification fee within that time period, the Department will return the notification to the participant, unless the Department agrees otherwise. If the Department confirms that the project is covered under the Program, the Department will begin processing the notification by first determining whether the notification is complete in accordance with Fish and Game Code section 1602(a)(2). The 30-day time period to determine whether the notification is complete shall begin on the date the Department confirms that the project is covered under the Program.

D. The Department will make every effort to provide the participant with two copies of a draft Agreement for review within 45 days after the notification is complete. If the Department fails to provide a draft Agreement within 60 days after the draft notification is complete, the participant may begin the project without an Agreement, as provided in Fish and Game Code section 1602(a)(4)(D). The draft Agreement will include the general measures in the MLTC for the Program that apply to all projects and the specific measures that particularly apply to the project described in the participant's notification. Upon receipt of the draft Agreement, the participant shall have 30 days to either accept or not accept the draft Agreement.

E. If the participant accepts the draft Agreement, the participant shall sign both copies and submit them to the Department. Upon receipt of the executed copies, the Department shall sign both. The Department shall then file a Notice of Determination with the State Clearinghouse relying on the environmental document approved or certified for the Permitting Program in accordance with CEQA. At the same time, the Department shall submit one original of the final Agreement to the participant,

retain one original, and submit a copy of the original to SQRCD. Upon receipt of the final Agreement, the participant shall be authorized to complete the project and/or activity pursuant to the conditions in the Agreement.

F. The Department may include in the draft Agreement measures that are not in the MLTC, if the Department determines such additional measures are necessary to protect fish and wildlife resources the project could substantially adversely affect, and the Department meets any CEQA requirements that might apply before issuing the final Agreement.

G. If the participant does not accept the draft Agreement, it shall notify the Department in writing that the draft Agreement is not acceptable. In that case, the dispute resolution provisions in Fish and Game Code section 1603, including arbitration, shall not apply. Instead, the participant will need to obtain an Agreement from the Department outside the Program before beginning the project. In doing so, the participant will need to submit a new notification and notification fee outside the Program, all relevant provisions in Fish and Game Code section 1600 *et seq.* will apply, including the dispute resolution provisions in Fish and Game Code section 1603, and the Department will comply with CEQA before issuing a final Agreement.

H. The term of any Agreement that the Department issues to a participant through the Program may not exceed five years.

I. Fish and Game Code section 1605(a), (b), and (d) through (f) shall apply to any Agreement that the Department issues to a participant through the Program.

#### IV. AMENDMENT

This MOU may be amended only by mutual written agreement between the Department and SQRCD.

#### V. TERMINATION

The Department or SQRCD may terminate this MOU at any time by written notice to the other party, in which case the MOU will terminate 30 days from receipt of the notice by the other party. Termination of this MOU shall not affect any Agreements issued under the Permitting Program prior to termination; shall not preclude the Department from issuing Agreements under the Permitting Program after termination; and shall not preclude the Department from using Attachment 1 in issuing Agreements under the Permitting Program after termination.

## VI. TERM

This MOU shall remain in effect for five (5) years from the date of execution, unless the Department and SQRCD terminate or extend it prior to its expiration. The term of this MOU may be extended only by mutual written agreement prior to its expiration.

## VII. REPRESENTATIVES

The individuals named below shall serve as the Department and SQRCD representatives for the Program.

For the Department:

Donna L. Cobb, 1600 Program Supervisor  
Department of Fish and Game  
Northern Region  
601 Locust Street  
Redding, CA 96001  
(530) 225-2314  
dcobb@dfg.ca.gov

For SQRCD:

Carolyn Pimentel  
District Manager  
Siskiyou Resource Conservation District  
P.O. Box 268  
Etna, CA 96027

## VIII. ACKNOWLEDGEMENTS

It is acknowledged that the purpose of this MOU is to set forth the roles and responsibilities of the Department and SQRCD with respect to the Program. This MOU does not affect SQRCD's rights and responsibilities under Fish and Game Code section 1600 *et seq.*, and does not constitute a waiver of SQRCD's rights and responsibilities to implement or maintain conservation practices in areas outside the Department's permitting authority.

## IX. EFFECTIVE DATE

This MOU shall be effective immediately upon signature by the Department, which shall be after SQRCD's signature.

X. SIGNATURE

SQRCD and the Department acknowledge and accept the terms and conditions of this MOU as evidenced by the following signatures of their duly authorized representatives.

**SISKIYOU RESOURCE CONSERVATION DISTRICT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Bill Krum  
President

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Gary B. Stacey  
Regional Manager  
Northern Region



## **ATTACHMENT 1**

### **MASTER LIST OF TERMS AND CONDITIONS FOR STREAMBED ALTERATION AGREEMENTS ISSUED UNDER SCOTT RIVER WATERSHED-WIDE PERMITTING PROGRAM**

#### **I. OVERVIEW**

This attachment identifies the activities that are eligible for coverage under the Streambed Alteration Agreement Program (“Program”) described in the attached Memorandum of Understanding (“MOU”) between the Department of Fish and Game (“Department”) and the Siskiyou Resource Conservation District (“SQRCD”); the general terms and conditions that will apply in all instances; and the specific conditions that will apply to those activities as determined by the Department on a project-by-project basis.

##### **A. Eligibility**

As described in the MOU, the Program is limited to SQRCD and agricultural operators (defined below) in the Scott River watershed (each one a “participant”) that intends to conduct an activity that is described in Section III (Covered Activities) below and subject to Fish and Game Code section 1602. An activity is subject to Fish and Game Code section 1602 if it will result in or involve: 1) a substantial diversion or obstruction of the natural flow of a river, stream, or lake; 2) a substantial change to the bed, channel, or bank of a river, stream, or lake; 3) the use of any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) the deposition or disposal of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

##### **B. Procedure**

Also as described in the MOU, to participate in the Program, each participant will need to complete a Program Notification Package attached hereto as Exhibit 1 (“notification”). It is the sole responsibility of the participant to fill out a notification. However, SQRCD will assist participants in completing the notification, on an as needed basis. If the activity is described in Section III below and is subject to Fish and Game Code section 1602 and the Department determines that the notification is complete, the Department will prepare a Streambed Alteration Agreement (“Agreement”) that includes all of the general conditions in Section IV below, and some of the specific conditions in Section V below. The participant and the Department will comply with the procedure described in paragraphs C through G in Section III in the MOU, which are incorporated herein by reference.

## C. Term

The term of any Agreement issued under the Program may not exceed five (5) years. The Agreement may be extended, but only in accordance with Fish and Game Code section 1605(b) and 1605(d) through (f).

## II. DEFINITIONS

For the purposes of this attachment and the Program, the following definitions apply:

“Active diversion” is defined as a water diversion that has been operated at least one out of the last five years.

“Agricultural operator” is defined in the Program as any natural person or any partnership, corporation, limited liability company, trust, or other type of association, or any public agency, as defined in CEQA Guidelines, § 15379, who diverts water from a stream by means of an active diversion in the Program Area for an agricultural purpose, or is involved in an agricultural operation on property in the Program Area through which or adjacent to which a stream flows. “Active diversion” is defined as a surface water diversion that has been operated at least one out of the last five years.

“Bedload” is defined as sand, gravel, boulders, or cobbles transported by water in a stream over time; the part of the load that is not continuously in suspension or solution.

“Coffer dam” is defined as a temporary watertight dam or barrier used to divert stream flow or to otherwise exclude water from an in-channel work area during construction. Coffer dams are fitted with a conduit that diverts the stream flow to the natural stream channel downstream of the work site.

“Covered activity” is defined as any activity described in Section III (Covered Activities) below.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

“Gravel” is defined to include gravel, rock, cobble, and any other aggregate material. It does not include fine sediment such as sand, silt, and clay.

“Push-up dam” is defined as a temporary diversion structure created by using loaders, backhoes, or excavators to move bedload within the stream channel to form a flow barrier that seasonally diverts the flow of the stream.

“Other temporary diversion structure” is defined as any temporary structure other

than a push-up dam) used to seasonally divert water from a stream and is typically made with hay bales, hand-stacked rocks and cobble, tarps, wood, and/or a combination of these materials placed in the channel without the use of heavy equipment.

“Participant” is defined as SQRCD and any agricultural operator within the program area (defined below) who has chosen to participate in the Program because the activity the participant intends to complete is a covered activity that is subject to Fish and Game Code section 1602.

“Person” is defined as any natural person or any partnership, corporation, limited liability company, trust, or other type of association. (Fish & G. Code, § 67.)

“Program area” is defined as the Scott River watershed, including the Scott River and its tributaries, in Siskiyou County as shown in Exhibit 2 in this attachment.

“Project” is defined as any project described in Section III (Covered Activities) below.

“Qualified botanist” is defined as a person that has experience conducting floristic field surveys, knowledge of plant taxonomy and plant community ecology, familiarity with the plants of the area, including rare, threatened, and endangered species, familiarity with the appropriate state and federal statutes related to plants and plant collecting; and experience with analyzing impacts of development on native plant species and communities.

“Responsible party” is defined as any participant that enters into an Agreement under the Program.

“Special-status species” is defined as any species that meets the definition of “endangered, rare, or threatened species” in section 15380 in title 14 of the California Code of Regulations, also known as the “CEQA Guidelines.”

“Stream” is defined to include any stream or river, whether perennial, intermittent, or ephemeral.

“Vehicle” is defined as any self-propelled device by which any person or property may be propelled, moved, or drawn upon (whether on or off-road), including, but not limited to, automobiles, trucks, backhoes, bulldozers, excavators, and tractors.

“Waters of the state” is defined as “any surface water or groundwater, including saline waters, within the boundaries of the state.” (Wat. Code, § 13050(e).)

### III. COVERED ACTIVITIES

The Program covers the nine (9) categories of activities described below (see A-I) that are subject to Fish and Game Code section 1602.

## A. Water Diversions

Water diversions covered under this category include only the diversion of water through a conduit or opening from streams, channels, or sloughs within the Scott River watershed by an agricultural operator for agricultural purposes in accordance with a valid water right, including one specified in the following court decree: Shackleford Creek # 13775 (April 10, 1950), French Creek #14478 (July 1, 1958), and Scott River #30662 (January 30, 1980).

## B. Water Diversion Structures

This category includes only the following activities relating to water diversion structures:

1. Ongoing management and/or maintenance of existing flashboard dams, including the placement of boards into concrete abutments across the wetted channel to build head to divert water, and the removal of the boards.
2. Ongoing maintenance, management, and repair of boulder weirs.
3. Installing, operating, maintaining, and removing push-up dams.
4. Installing, operating, maintaining, and removing other temporary diversion structures that are not push-up dams.
5. Installing or placing pumps and sumps and maintaining existing pumps and sumps within or adjacent to the active channel of a stream, which sometimes requires the use of large machinery within or adjacent to the active channel.
6. Installing headgates and measuring devices that meet the Department's standards on or in a diversion channel, which usually is done by excavating the site to proper elevation using large machinery, positioning the headgate and measuring weir at the appropriate elevation, and installing rock or other "armoring" around the headgate to protect the structure. During installation, the stream bank could be affected by the construction of concrete forms and other necessary construction activities.

## C. Fish Screens

This category includes only the installation, operation and maintenance of the types of fish screens described below, provided they meet the Department's and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's ("NMFS") criteria for steelhead fry as they exist at the time the screen is installed.

Installing a fish screen usually includes site excavation, forming and pouring a concrete foundation and walls, excavation and installation of a fish bypass pipe or channel, and installation of the fish screen structure. Heavy equipment is typically used for excavation of the screen site and bypass. If the fish screen is placed within or near flood prone areas, typically rock or other “armoring” is installed to protect the screen. The average size of the bed, channel, and/or bank area affected by the installation of a bypass pipe or channel ranges from 40 to 100 square feet. Types of fish screens include:

1. Self-cleaning screens, including flat plate self-cleaning screens, and other self-cleaning designs, including, but not limited to, rotary drum screens and cone screens, with a variety of cleaning mechanisms, consistent with Department and NMFS screening criteria.
2. Non-self cleaning screens, including tubular, box, and other screen designs consistent with Department and NMFS screening criteria.

#### D. Stream Access and Crossings

This category includes only the moving of livestock and vehicles across flowing streams or intermittent channels and/or the construction of stream crossings at designated locations where potential spawning gravel, incubating eggs, and fry are not present based on repeated site specific surveys. Factors considered when selecting a crossing location include the stream gradient, channel width, and the ability to maintain the existing channel slope. Generally, to construct a crossing, a boulder weir is placed on the downstream side of the crossing to maintain stream gradient and angular quarry rock is placed in the crossing location; the width of the crossing does not exceed 25 feet; the crossing spans the entire width of the channel; the crossing is “keyed” into the bank on each side; the approaches on both sides do not exceed a slope of 3:1; and bank armoring (usually using quarry rock) is added where needed.

#### E. Fencing

This category includes only the installation and maintenance of livestock exclusion fencing to protect riparian zones including the construction of fencing along livestock and vehicle crossings and livestock watering lanes.

#### F. Riparian Restoration and Revegetation

This category includes only the restoration, including revegetation of riparian areas, consistent with the methods specified in the most current edition of the Department’s *Salmonid Stream Habitat Restoration Manual*, or as otherwise approved in writing by the Department. The most current edition of the manual is available at <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>. Typically, riparian vegetation is planted within or adjacent to the active channel, and often in or near the wetted channel. Plantings include herbaceous perennials, emergent species, native grasses,

trees, and shrubs. Planting methods vary by species, site, and size of material planted, ranging from hand planting to using a backhoe or excavator. For riparian trees, planting densities range from 130 to 300 plantings per acre, depending on the restoration goals (e.g., shading, sediment trapping, and bank stabilization), substrate, and hydrology. Trees and cuttings range in size from small rooted plugs to large diameter pole plantings. When installing pole plantings, heavy equipment may be used to excavate to or below water table depth. Maintenance activities include the occasional use of hand tools, portable pumps, pick-up trucks and/or water trucks in or near the bed, bank, or channel, for irrigation, debris removal, and replanting of restoration sites.

#### G. Instream Structures

This category includes only the installation, maintenance, and repair of the following instream structures consistent with the methods specified in the most current edition of the Department's *Salmonid Stream Habitat Restoration Manual*, available at <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>:

1. structures to protect the bed and banks of streams;
2. bioengineered habitat structures;
3. deflectors;
4. boulder clusters;
5. boulder weirs for instream habitat or to replace flashboard dams, push-up dams, and other temporary diversion structures;
6. large woody debris; and
7. spawning gravel to enhance spawning habitat.

#### H. Stream Gages

This category includes the installation and maintenance of stream gages in the active stream channel, usually using pipe two (2) inches or greater in diameter. Typically, the pipe is secured to the bank by notching it into the bank and by then attaching it to the bedrock, a boulder, or a concrete buttress. Generally, heavy equipment is not needed to install and maintain stream gages.

#### I. Barrier Removal and Fish Passage Projects

The projects listed below are covered under this category, although the Department may add others to the list in the future. Each project will provide access to historic fish spawning and rearing habitat.

1. The installation and maintenance of a fish ladder at the Scott Valley

Irrigation District diversion head

2. The installation and maintenance of two or more boulder weirs and improved head works at Farmers Ditch
3. The following barrier removal and fish passage projects on tributaries to the east fork of the Scott River:
  - a. Rail Creek fish barrier removal project
  - b. Grouse Creek low flow fish passage project
  - c. Big Mill Creek fish barrier and channel restoration projects
  - d. Shackleford Creek confluence gravel aggradation maintenance

#### IV. GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL COVERED ACTIVITIES

All of the general terms and conditions listed below (1-19) will be included in every Agreement the Department issues to a responsible party under the Program, regardless of the activity or activities the Agreement authorizes.

##### A. Administrative

1. The responsible party shall provide a copy of this Agreement to all persons who will be completing any part of the project or projects this Agreement authorizes, including, but not limited to, employees, contractors, and subcontractors. Copies of the Agreement and any amendments thereto shall be readily available at each work site at all times, and shall be presented to any employee of the Department or another governmental agency upon demand.
2. The responsible party shall notify the Department either by telephone or in writing (by e-mail, fax, or mail), at least five (5) days prior to initiation of any construction activities, unless this Agreement provides otherwise and at least five (5) days prior to completion of construction activities:

Department of Fish and Game  
601 Locust Street  
Redding, CA 96001  
Attn: Streambed Alteration Program

3. This Agreement authorizes only the project or projects described herein. The responsible party shall notify the Department in accordance with Fish and Game Code section 1602 before beginning any project subject to that section that is not described herein. Failure to do so could result in enforcement action against the responsible party.

B. Amendments

4. The Department may amend this Agreement if it obtains new information that shows the project or projects this Agreement authorizes could substantially adversely affect fish and wildlife resources that were not considered at the time of, or by the original terms of the agreement, notwithstanding responsible party's compliance with the Agreement.
5. The responsible party may amend this Agreement at any time, but only if the Department agrees to the amendment in writing.
6. Any amendments to this Agreement shall be made in writing, signed by the responsible party and the Department, and attached to this Agreement.
7. The responsible party may request one extension of this Agreement for the period to expire when the Resource Conservation District Incidental Take Permit expires, provided that the request is made in writing prior to the expiration of its original term. The Department shall grant the extension unless it determines that the Agreement requires modification because the measures contained in the Agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect or there has been a substantial change in conditions. If the responsible party fails to request the extension prior to the Agreement's termination then the responsible party shall be required to submit a new notification and required information to the Department in order to complete a covered activity. Any activity conducted under an expired Agreement is a violation of Code section 1600 *et seq.*

C. Suspension and Revocation

8. The Department may suspend or revoke this Agreement at any time if any of the following occurs:



- a. The Department determines that the responsible party is not in compliance with its terms and conditions, provided that the Department provides the entity written notice that explains the basis for the suspension or revocation and provides the entity an opportunity to correct any deficiency before the Department suspends or revokes the Agreement.
  - b. The Department and the responsible party do not reach agreement with any amendment proposed pursuant to condition 4 above within 30 days of receiving notification by the Department.
  - c. Department personnel are not allowed access to property necessary to verify compliance with, or the effectiveness of, the terms and conditions in this Agreement.
9. Any suspension or revocation shall take effect immediately upon receipt of such notice by the responsible party, or in accordance with the instructions contained in the notice.
10. At the discretion of the Department, any action to suspend this Agreement may be limited in scope to address the specific problem or problems resulting in the suspension. Hence, the Department may limit the suspension to specified work or specified areas. The Department may lift any suspension when it has determined that responsible party has adequately addressed the problem or problems resulting in the suspension and that reinstatement of the Agreement will not cause harm to fish and wildlife resources.
11. Nothing in this Agreement precludes the Department from pursuing an enforcement action against the responsible party instead of or in addition to suspending or revoking the Agreement.
12. Nothing in this Agreement limits or otherwise affects the Department's enforcement authority.

D. Liability

13. The responsible party agrees that it is responsible for ensuring compliance with the terms of this Agreement, and that it is not excused from responsibility for a violation of the Agreement that occurs as a result of an act or omission by any person acting on behalf of the responsible party, including its agents, officers, employees, and contractors. In the event that any person acting on behalf of the responsible party violates the Agreement, then the responsible party shall take the steps and incur the expense necessary to remedy the violation, if directed to do so by the

Department or a court of competent jurisdiction. The responsible party's obligation to remedy the violation is intended for the benefit of the Department only, and shall be without prejudice to the responsible party's right to seek reimbursement, damages, or other relief from any person.

14. The responsible party agrees to defend, indemnify, and hold harmless the Department, its agents, officers, and employees from and against any Claim. For purposes of this agreement, "Claim" means any claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees that arise out of, result from, or are in connection with the performance of the project or projects that this Agreement authorizes by the responsible party or its agents, officers, or employees, and that involve actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use caused in whole or in part by any act or omission of the responsible party, its agents, employees, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. Claim does not include: (1) any claims, damages, losses, judgments, liabilities, expenses, or other costs, including litigation costs and attorney's fees, arising out of and due solely to the negligence or willful misconduct of the Department, its agents, officers, and employees or (2) any claims, damages, losses, judgments, liabilities, expenses or other costs, including litigation costs and attorneys fees, arising out of actions or proceedings against the Department based on the Department's actual or alleged failure to comply with or otherwise properly administer its responsibilities under the California Fish and Game Code, and the California Environmental Quality Act.

If any action or proceeding is brought against the Department, its agents, officers, or employees by reason of any Claim, the responsible party shall, at the election of and upon written notice from the Department, defend such action or proceeding by counsel reasonably acceptable to the Department or reimburse the Department for all reasonable charges incurred for services of the California Attorney General.

This indemnification shall not prohibit the responsible party from bringing any action against the Department, its agents, officers, and employees based on a right guaranteed by the state or federal Constitution.

15. This Agreement does not constitute the Department's endorsement of the project or projects this Agreement authorizes or the project

design or an assurance by the Department that the project will be properly implemented.

16. All provisions of this Agreement shall remain in force throughout the term of the Agreement. After the Agreement expires, the responsible party shall remain responsible for implementing any mitigation or other measures specified in the Agreement to protect fish and wildlife resources, as required in Fish and Game Code section 1605(a)(2).

E. Access

17. By signing this Agreement, the responsible party shall provide non-enforcement Department personnel permission to access the project site described in this Agreement during normal business hours for the specific purpose of verifying compliance with, or the effectiveness of, the terms and conditions in this Agreement, provided the Department notifies the responsible party, whether verbally or in writing, at least 48 hours in advance of accessing the project site. If the project site is not located on the responsible party's property, the responsible party shall obtain permission from the landowner of the project site for Department personnel to access the site by providing the Department with an executed copy of the Right of Entry Agreement Form attached hereto as Exhibit 3.

F. Other Laws

18. This Agreement does not relieve the responsible party from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or projects this Agreement authorizes, such as a permit issued by the U.S. Army Corps of Engineers ("ACOE") pursuant to section 404 of the Clean Water Act, authorization from the North Coast Regional Water Quality Control Board ("NCRWQCB") pursuant to section 401 of the Clean Water Act, a permit issued under the Porter-Cologne Water Quality Control Act, and authorization from NMFS or the U.S. Fish and Wildlife Service for the incidental take of a species listed as endangered or threatened under the Endangered Species Act .
19. This Agreement does not relieve the responsible party from complying with provisions in the Fish and Game Code other than section 1600 *et seq.*, including, but not limited to authorization of "take" of a State threatened or endangered species under the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*) and sections 5650, 5901, and 5937.

## V. SPECIFIC TERMS AND CONDITIONS

In addition to the General Terms and Conditions in Section IV above, the Department will include some of the specific conditions listed below (20 -110) in any Agreement it issues to a responsible party under the Program, depending on the type of project or projects the Agreement authorizes.

### A. Water Diversions

20. This Agreement does not authorize the maintenance, construction, or replacement of any temporary or permanent dam, or diversion structure or the filling of any channel, except as described herein.
21. All water diversion facilities that the responsible party owns, operates, or controls shall be operated and maintained in accordance with current law and applicable water rights, including any specified in the following court decree: Shackleford Creek #13775 (April 10, 1950), French Creek # 14778 (July 1, 1958), and Scott River # 30662 (January 30, 1980).
22. The responsible party shall divert and use water in accordance with a valid water right, including any limitations on when water may be diverted and used, the purpose for which it may be diverted and used, and the location(s) where water may be diverted and used. For groundwater wells located within the interconnected zone as defined in the Scott River decree, the property that may be irrigated from these wells shall be as identified in that decree.
23. The responsible party shall verify that the quantity of water the responsible party is diverting or using is in accordance with a valid water right. Verification shall be performed by the watermaster for diversions that are controlled by a watermaster. In the absence of a watermaster, verification shall be performed by some other reliable means as determined by the Department. The quantities diverted at each diversion shall be reported to the Department on at least a monthly basis in the form of a database or in some other form approved by the Department.
24. The responsible party shall install a locking headgate or valve that can regulate flow, and a functional measuring device or flow meter that meet Department criteria on or in all water diversion structures identified in this Agreement.
25. Notwithstanding any right the responsible party has to divert and use water, the responsible party shall allow sufficient water to pass over, around, or through any dam the party owns or operates to keep in good condition any fish that may exist below the dam, as

required by Fish and Game Code section 5937.

26. All water diversion facilities shall be designed, constructed, and maintained so they do not prevent, impede, or tend to prevent or impede the passing of fish upstream or downstream, as required by Fish and Game Code section 5901. This includes, but is not limited to, maintaining or providing a supply of water at an appropriate depth and velocity to facilitate upstream and downstream migration of juvenile and adult salmonids.
27. The responsible party shall provide volitional fish passage for both adult and juvenile salmonids, both upstream and downstream within 5 years of the effective date of this Agreement at all diversions subject to this Agreement. Where such passage is inadequate, the responsible party shall submit plans to improve passage to the Department for review and approval. If the Department determines that engineered drawings are necessary, the responsible party shall submit such drawings to the Department for its review and approval prior to implementing the project.
28. The responsible party shall install fish screens on any unscreened diversion that is subject to this Agreement. Fish screens and flow velocities shall meet Department and NMFS screening criteria to ensure the screens do not harm fish at any life stage by, for example, being drawn into an intake or being impinged against the screen. Where necessary, a bypass pipe or channel acceptable to the Department and NMFS shall be installed and maintained to allow screened fish to be returned safely to the stream. Fish screens and bypass pipes or channels shall be in place and maintained in working order at all times water is being diverted.
29. The responsible party shall regularly inspect all fish screens and bypass pipes or channels to verify that they are effectively protecting salmonids and other fish species in accordance with Department and NMFS fish screening criteria. When necessary, the responsible party shall clean and repair all fish screens and bypass pipes or channels. If a fish screen is removed for cleaning or repair, the responsible party shall ensure either that a replacement screen is installed immediately, or water is not flowing through the area where the screen is removed.
30. When a bypass pipe is necessary, the bypass entrance(s) shall be installed and operated such that out-migrants (all life stages) can easily locate and enter them. All components of the bypass system, from entrance to outfall, shall be designed and operated to minimize the potential for debris blockage and must be sized to accommodate all life stages of fish and aquatic species which may

be drawn into the diversion. Sufficient flow will be supplied from the diversion into a fish bypass to safely and efficiently return fish back to the stream. Bypass outfalls shall be designed and located so that there is sufficient depth and velocity to avoid injury and predation to all life stages of fish and aquatic life which may be directed into bypass pipe.

31. All push-up and other temporary dams shall be constructed, operated, maintained, and removed using the Best Management Practices (“BMPs”) provided with this Agreement.
32. Push-up dam construction activities shall commence no earlier than May 1, unless otherwise authorized by the Department in this Agreement.
33. The responsible party may commence push-up dam construction activities prior to May 1 if the Department has provided written verification to the responsible party that the construction activities will not substantially adversely affect an existing fish or wildlife resources, including the redds of anadromous fish species. The responsible party shall notify the Department at least seven (7) days in advance of any dam construction proposed to occur prior to May 1 so that it can survey the area and determine if the proposed activities will result in any adverse impacts to fish and wildlife resources.
34. Push-up dam construction and removal shall be accomplished by the operation of a bucket attached to a loader, excavator, or backhoe that is situated outside of the wetted portion of the stream channel. The responsible party shall, at a minimum, do the following:
  - a. check and maintain vehicles on a daily basis to prevent leaks of materials that could be deleterious to aquatic life, wildlife, or riparian habitat;
  - b. minimize disturbance to the stream bed and bank and keep turbidity of the water to a level that is not deleterious to aquatic life; and
  - c. allow the work area to “rest” to allow the water to clear after any activity that causes a plume of turbidity above background levels, resuming work only after the stream has reached the original background turbidity levels.
35. Rock used for boulder weir construction shall be sufficient for the intended application, and sized to resist wash-out. The weir

structure shall include a low point to maintain the thalweg of the stream. Weir elevations shall not create lifts in the stream channel that exceed twelve (12) inches. All engineered drawings shall be reviewed and approved by the Department Fisheries Engineering Team prior to the start of construction

36. The responsible party shall contact the Department's fisheries program in Yreka at (530) 842-9322 at least five (5) days before installing any dam or instream structure that could result in stranding of fish, or before changing the operation of any existing dam or instream structure that could result in stranding of fish.
37. Notwithstanding Fish and Game Code sections 6020–6028, where those statutes apply, the responsible party shall meet the requirements specified in conditions 28 and 29 above.
38. The following types of annual maintenance activities on push-up dams and other temporary diversion structures are authorized:
  - a. the removal of up to two (2) cubic yards of bedload, sediment, debris, and vegetation that directly obstructs or otherwise interferes with the proper function and operation of existing diversion structures and devices, including intake openings, gates, weirs, gages, and fish passage facilities;
  - b. the annual installation and removal of a culvert pipe (if applicable);
39. In completing any annual maintenance described in condition 38 above, the responsible party shall comply with the following requirements:
  - a. vehicles shall only be used outside the wetted portion of the stream channel for annual maintenance;
  - b. bedload may only be removed to a depth that is needed to open water flows while maintaining the original thalweg for fish passage;
  - c. Where vehicles are used to remove bedload, sediment, debris, and vegetation that directly obstructs or otherwise interferes with the proper function and operation of existing diversion structures and devices, removal shall not extend more that twenty-five (25) linear feet in total.
40. No later than 5 years after the effective date of this Agreement, the responsible party shall replace their push-up dams with vortex

weirs or some other Department approved diversion method unless the Department determines that an alternative method is not feasible.

41. If rock/boulder weir(s) subject to this Agreement require the repair, realignment, or replacement of rock/boulder(s) to maintain proper operation the responsible party shall coordinate with the Department to determine the cause of the malfunction and shall submit plans for the proposed work to the Department for review and approval.
42. The responsible party may annually remove up to two (2) cubic yards of sediment or other instream material from an existing pump intake area to maintain the efficient operation of the pump
43. All push up and other temporary diversion structures, including plastic, shall be removed no later than five (5) days after the end of the period during which water may be lawfully diverted, unless otherwise authorized by the Department in this Agreement. If the dam is utilized for stockwatering purposes the dam shall be removed from the channel prior to winter storm flows.
44. Within 2 years from the effective date of the Agreement, the responsible party shall have all other temporary diversion structures authorized under this Agreement assessed to determine whether the structure complies with the Fish and Game Code (Code). If the other temporary structure does comply with the Code, then the responsible party may use such structure, provided that any specific BMPs added to the Agreement to minimize dam-related impacts shall be implemented. If the Department determines that the other temporary diversion structure does not comply with the Code, the responsible party shall replace the other temporary diversion structure with a vortex weir or some other diversion method approved by the Department within five years of the date of such determination.

B. Riparian Restoration and Revegetation

45. Any habitat improvement projects shall be designed and implemented in accordance with the methods specified in the most current edition of the Department's *California Salmonid Stream Habitat Restoration Manual*. The most current edition of the manual is available at <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>.
46. At least sixty (60) days before the responsible party intends to begin the restoration project, a restoration plan shall be submitted to



the Department for review and approval. The plan shall be prepared by persons with expertise in northern California ecosystems and native plant re-vegetation techniques. The plan should include at a minimum the following information: (a) the location of the restoration site(s); (b) the plant species to be used at each site; (c) a schematic depicting the site(s); (d) the time of year the plantings will be made; (e) a description of the irrigation methodology or techniques that will be used to maintain the plantings consistent with condition 100 below; (f) measures to control exotic vegetation on restoration site(s); (g) the success criteria to be employed; (h) a detailed monitoring program; and (i) contingency measures that will be implemented if the success criteria are not met.

47. All restoration plantings shall have a success criterion of a minimum 80% survival rate after five (5) years. A final monitoring report shall be submitted to the Department that provides the data used to determine whether or not the survival criterion has been met.
48. Plantings shall be installed between November 1, when there has been sufficient rainfall, and April 1 unless otherwise authorized by the Department in this Agreement.
49. If the irrigation system will use water from a stream, the system shall meet NMFS's *Water Drafting Specifications* (August 2001). Restoration projects that are implemented within fish bearing streams also shall meet current Department and NMFS fish screening criteria for anadromous fish. When the plantings are sufficiently established, the irrigation system shall be removed.
50. Large woody debris shall be left within the riparian zone to provide a source for future recruitment of wood into the stream.
51. A final monitoring report shall be submitted to the Department for review and approval. The final report shall provide the data that shows that the success criteria have been met.
52. The responsible party shall not be released from the maintenance and monitoring obligations described in this section until such time as the responsible party has requested and received written concurrence from the Department that the success criteria have been met.

C. Instream Structures

53. Any instream structure shall be designed and implemented in accordance with the methods specified in the most current edition of the Department's *California Salmonid Stream Habitat*

*Restoration Manual*. The most current edition of the manual is available at:

<http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>.

54. Instream work shall occur only when salmonids are least likely to be present or affected by the project, July 1 through October 31.
55. Significant fish habitat, such as pools, spawning sites, large woody debris structures, and shading vegetation, shall not be disturbed.
56. The responsible party may repair damage to any instream structure authorized by this Agreement, provided the responsible party notifies the Department prior to commencing any repair activities.
57. If the stream channel has been altered during the operation of a project or projects this Agreement authorizes, its low flow channel shall be restored without creating possible future bank erosion problems, a flat, wide channel, or a sluice-like area. The gradient of the streambed shall be returned to its pre-project grade, unless the gradient modification is intended as part of a restoration project, in which case the Department approval of the design must be obtained prior to project initiation.
58. Chemically-treated timbers that could harm aquatic life shall not be used for grade or channel stabilization structures, bulkheads, or other instream structures.
59. Temporary instream structures that are not designed to withstand high flows and are constructed from materials that could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.
60. The responsible party shall ensure that all livestock and vehicle crossing sites and livestock watering lanes, whether temporary or permanent, meet the following criteria:
  - a. Crossing sites and livestock watering lanes shall not be located in the tails of pools, known spawning habitat, or identified, suitable spawning habitat.
  - b. All approaches shall be sloped with clean angular base rock and no steeper than 3:1.
  - c. Angular rock shall be applied to the crossing only between July 1 and October 31. The diameter of the angular rock shall be defined in the notification and be specific for the site conditions. Designs shall be submitted to the Department

for approval prior to project construction to eliminate the risk that the rock will become a grade control that would adversely affect channel conditions.

- d. In locations where the stream crossings occur on intermittent streams, the angular rock shall be added only when the stream channel is dry.
  - e. No native soil may be pushed into the watercourse high flow channel. If grading of the road surface is required, all material shall be graded away from the watercourse.
  - f. Constructed or re-constructed crossing or watering lanes shall have approaches treated to minimize sediment production and prevent tracking of soil into the crossing.
  - g. Approaches shall be armored with durable compacted rock from the edge of the watercourse for a minimum of fifty (50) feet, or to the nearest water bar or point where road drainage does not drain toward the crossing.
  - h. Livestock and vehicles shall not cross flowing streams between October 31 and July 1 except on designated lanes where measures to prevent spawning have been taken, or where a Department fisheries biologist or Department approved spawner surveyor verifies that redds are not present and/or will not be damaged. Survey findings shall be submitted to the Streambed Alteration Program for review and approval.
61. Spawning gravel used for restoration projects shall be clean, pre-washed, uncrushed natural river rock. Gravel must be washed at least once and have cleanliness value of 85 or higher (California Test No. 227). Particle size shall be graded with at least 98% passing a 3-inch screen, 60-80% passing a two (2) inch screen, and 0-5% passing a half (½) inch screen (% by dry wt) or approved by the Department. Gravel must be completely free of oils or any other petroleum based material, clay, debris, and other types of organic matter. Gravel may be stockpiled near the injection site, but mixing with any earthen material is prohibited.

D. Habitat and Species Protection

62. Except as specified in this Agreement, the disturbance, trimming, or removal of vegetation from the streambed or streambanks is prohibited without prior written approval from the Department.

63. All work areas described in this Agreement shall be flagged or fenced with temporary fencing to prohibit unauthorized and unnecessary disturbance of vegetation.
64. Any herbicide shall be handled and applied by a licensed applicator in accordance with all applicable, federal, state, local laws, regulations, procedures, and guidelines.

E. Use of Vehicles in Wetted Portions of Streams

65. Vehicles shall not be operated within the wetted portion of the stream channel unless specifically authorized in this Agreement.
66. Vehicle operation in the wetted portion of a stream is authorized when salmonids are least likely to be present (July 1 through October 31).
67. When operating vehicles in wetted portions of the stream channel or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, the responsible party shall, at a minimum, do the following:
  - a. check and maintain vehicles on a daily basis to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic life, wildlife, or riparian habitat;
  - b. minimize the number of passes through the stream to avoid increasing the turbidity of the water to a level that is deleterious to aquatic life; and
  - c. allow the work area to “rest” after each individual pass of the vehicle that causes a plume of turbidity above background levels, resuming work only after the stream has reached the original background turbidity levels.

F. Pollution Control

68. Vehicles driven and/or operated adjacent to the stream channel shall be checked and maintained on a daily basis to prevent leaks of materials that could be deleterious to aquatic life, wildlife, or riparian habitat.
69. For all activities performed in or near a stream, where there is a potential for an accidental spill of deleterious substances, absorbent materials designated for spill containment and clean-up shall be present and available for use at the project site. Clean-up

of all spills shall begin immediately. The responsible party shall notify the State Office of Emergency Services at 1-800-852-7550 and the Department immediately after any spill occurs, and shall consult with the Department regarding clean-up procedures.

70. Where they exist, the work site shall be accessed using roads and access ramps.
71. The use or storage of petroleum-powered equipment shall be accomplished in a manner to prevent the potential release of petroleum materials into waters of the state.
72. Stationary equipment such as motors, pumps, generators, and welders that contain deleterious materials, located within or adjacent to a stream shall be positioned over drip pans.
73. All refueling of machinery and handling or storage hazardous materials shall be done no less than one hundred and fifty (150) feet away from the edge of any river, stream or lake. All unused or left over materials shall be transported offsite and properly disposed of.
74. Staging and storage areas for machinery, equipment, and materials shall be located a minimum of thirty-five (35) feet beyond the banks of any stream or outside of the normal high-water mark whichever is further.
75. No debris, soil, silt, sand, bark, slash, spoils, sawdust, rubbish, cement, or concrete or washings thereof; asphalt, paint, or other coating material; oil or petroleum products; or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into, or placed where it may be washed by rainfall or runoff into, waters of the state. When operations are completed, any excess materials or debris shall be removed from the work area and disposed of in a lawful manner.

#### G. Erosion and Sediment Control

76. The responsible party shall prevent the discharge of sediment, and/or muddy, turbid, or silt-laden waters, resulting from the project, into the stream channel. Where necessary to prevent such discharge, the responsible party shall properly install and maintain sediment barriers (including, but not limited to, filter fabric fencing, fiber mats, weed free straw, or fiber wattles or rolls) capable of preventing downstream sedimentation/turbidity. Such devices shall be cleaned of all trapped sediment as necessary to maintain proper function. Recovered sediment shall be disposed of where it shall

not return to any river, stream, or lake. Such devices shall be completely removed from the channel, along with all temporary fills, upon completion of operations.

77. Silt catchment basins shall be designed, located, and constructed to preclude any spills into a stream or lake during periods of high water levels.
78. Silt catchment basins located within the stream shall be constructed of materials that are free of mud and silt. Upon completion of the project, all silt catchment basin materials along with the trapped sediments shall be removed from the stream in such a manner that sediment is not discharged into the stream.
79. If the Department determines that turbidity/siltation levels resulting from a project or projects this Agreement authorizes constitute a threat to aquatic life, all activities associated with the turbidity/siltation shall cease until effective Department-approved sediment control devices are installed and/or abatement procedures are implemented.
80. Downstream turbidity levels shall not exceed the standards identified in the NCRWQCB's "Water Quality Control Plan for the North Coast Region."
81. Soils exposed by project operations shall be mulched to prevent sediment runoff and transport. Mulches shall be applied so that not less than 90% of the disturbed areas are covered. All mulches, except hydro-mulch, shall be applied in a layer not less than two (2) inches deep. Where appropriate, all mulches shall be kneaded or tracked-in with track marks parallel to the contour, and tackified as necessary to prevent excessive movement. All exposed soils and fills, including the downstream face of the road prism adjacent to the outlet of culverts, shall be reseeded with a mix of native grasses common to the area, free from seeds of noxious or invasive weed species, and applied at a rate which will ensure establishment.
82. If necessary to prevent mobilization of loose soils, fiber mats shall be laid over loose soils prior to mulching and tracking.
83. Soils adjacent to the stream channel that are exposed by project operations shall be adequately stabilized before rainfall is expected during construction, and immediately upon completion of construction, to prevent the mobilization of such sediment into the stream channels or adjacent wetlands. The responsible party shall monitor National Weather Service forecasts to determine the chance of precipitation.

84. All exposed soil or areas stripped of vegetation shall be restored with native vegetation local to the area.

#### H. Bank Stabilization

85. For bank stabilization work, slopes shall not be steeper than 2:1 unless they are armored and the Department has approved the plans. Armoring shall consist of rock and/or native vegetation. Bank stabilization material shall extend up to the normal high-water mark.
86. Rock slope protection ("RSP") and energy dissipater materials shall consist of clean rock appropriate for its intended application and sized and properly installed to resist washout. RSP slopes shall be supported with properly sized boulders "keyed" into a footing trench with a depth sufficient to properly seat the footing course boulders and prevent instability.
87. No rock, rip-rap, or other RSP shall be placed in areas where native vegetation can become established or where bio-engineered bank stabilization can be accomplished, unless approved in advance by the Department.
88. Native riparian plant species shall be used to stabilize banks.

#### I. Dewatering

89. Any equipment work within the stream channel shall be performed in isolation from the flowing stream.
90. Dewatering activities shall be implemented in accordance, and otherwise consistent with the most current edition of The Department's *California Salmonid Stream Habitat Restoration Manual*. The most current edition of the manual is available at <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>.
91. A coffer dam or other flow barrier, approved by the Department, shall be constructed to temporarily divert the flow around the project site.
92. Measures shall be taken immediately downstream of the work site to capture suspended sediment. Silt catchment fences shall be installed or a filter berm of clean river bedload shall be constructed. Silt fences and other non-native materials shall be removed from the stream following completion of the project. Berms constructed out of native bedload may be left in place after breaching, provided they do not impede the stream flow or fish passage.

93. The location of diversion points shall be approved by the Department prior to initiating the project.
94. Construction of the flow barrier and/or the new channel shall begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Diversion berms shall be constructed of onsite bedload of low silt content, inflatable dams, sand bags, or other materials approved by the Department. Barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed from the work site when the work is completed, and removal shall proceed from downstream in an upstream direction. Clean bedload may be left in the stream, but the barrier must be breached to return the stream flow to its natural channel and to provide fish passage.
95. The intake pipe used to divert flow around the work site, either by pump or gravity flow, shall be fitted with a fish screen meeting Department and NMFS criteria to prevent entrainment or impingement of small fish.
96. Any turbid water pumped from the work site shall be disposed of in an upland location where it will not drain directly into any stream channel.
97. Dewatering shall be done in a manner that prevents the discharge of material that could be deleterious to fish, plant life, or bird life into any river, stream, or lake and maintains adequate flows to downstream reaches during all times natural flow would have supported aquatic life. Such flows shall be of sufficient quality and quantity to support fish and other aquatic life above and below the diversion. Normal flows shall be restored to the affected stream immediately upon completion of work at that location.
98. Dewatering activities shall be conducted in such a manner so as to minimize downstream sedimentation and turbidity, and to minimize channel disturbance. The responsible party shall incorporate frequent equipment resting periods of no less than thirty (30) minutes to allow flows to clear.
99. The following measures shall be taken to minimize harm and mortality to salmonids resulting from fish relocation and dewatering activities:



- a. Fish relocation and dewatering activities shall only occur between July 1 and October 31 of each year.
- b. The responsible party shall minimize the amount of wetted stream channel that is dewatered at each individual project site to the fullest extent possible.
- c. All electrofishing shall be performed by a qualified fisheries biologist and conducted according to the NMFS *Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act* (June 2000) and the Department shall be contacted prior to any electrofishing.

J. Ground-Disturbing Activities

- 100. Prior to ground-disturbing activities described in this Agreement, work sites shall be surveyed for special-status plant species by a qualified botanist. Special-status plant surveys shall be conducted following the *Guidelines for Assessing Effects of Proposed Projects on Rare, Threatened and Endangered Plants and Natural Communities* (Department 2000). The guidelines may be obtained from the Department or at: [www.dfg.ca.gov/bdb/pdfs/guideplt.pdf](http://www.dfg.ca.gov/bdb/pdfs/guideplt.pdf). The survey report, including the methodology and survey findings, shall be provided to the Department for review and approval prior to any ground-disturbing activities.
- 101. If any special-status plant species are identified at a work site the Department shall identify one or more of the following protective measures, but not limited to these measures, to be implemented at the project site before work may proceed:
  - a. fencing to prevent accidental disturbance of special-status plants during construction;
  - b. on-site monitoring by a qualified botanist during construction to assure that special-status plants are not disturbed; and/or
  - c. redesign of proposed work to avoid disturbance of special-status plant species.
- 102. Prior to any ground-disturbing activities described in this Agreement, the responsible party shall contract with at least one qualified archaeologist and paleontologist to complete cultural and paleontological resource surveys to identify any previously recorded and unknown historical resources or unique archeological resources (i.e., cultural resources as described in CEQA (Pub.

Resources Code, § 21083.2) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15064.5)) or unique paleontological resources, using standard protocols. The survey report, including the methodology and survey findings, shall be provided to the Department for review and approval prior to any ground disturbing activities.

103. If potentially significant historical resources, unique archeological resources and/or paleontological resource sites are identified at the work site described in this Agreement, the Department, in consultation with the consulting archeologist or paleontologist, shall identify one or more of the following protective measures, but not limited to these measures, to be implemented at the project site before work may proceed:
  - a. redesign of proposed work to avoid disturbance of cultural or paleontological resources;
  - b. fencing to prevent accidental disturbance of cultural or paleontological resources during construction; and/or
  - c. on-site monitoring by a cultural and/or paleontological resource professional during construction to assure that cultural and/or paleontological resources are not disturbed.
104. The responsible party shall report any previously unknown historical resources or unique archeological resources, and paleontological remains discovered at the site to the Department and other appropriate agency(s).
105. In the event of an inadvertent discovery of cultural resources such as lithic debitage, ground stone, historic debris, building foundations, or bone are discovered during a ground disturbing activity, work shall cease within twenty (20) meters (sixty-six (66) feet) of the discovery, as the CEQA Guidelines require (Cal. Code Regs., tit. 14, § 15064.5, subd. (f)). Work near the archaeological finds shall not resume until a professional archaeologist who meets the Secretary of the Interior's Standards and Guidelines (36 CFR Part 61) has evaluated the materials and offered recommendations for further action.
106. In the event of an inadvertent discovery of human remains during project construction, work shall cease within twenty (20) meters (sixty-six (66)) of the discovery location, and any nearby area reasonably suspected to overlie adjacent human remains (see Pub. Resources Code, § 7050.5). The county coroner shall be contacted to determine if the cause of death must be investigated. If the

coroner determines that the remains are of Native American origin, the responsible party shall comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission ("NAHC") (Pub. Resources Code, § 5097). The coroner will contact the NAHC.

107. The responsible party shall ensure that the immediate vicinity where Native American human remains are located, according to generally accepted cultural or archeological standards or practices, is not damaged or disturbed by further ground disturbing activity until the responsible party has discussed and conferred with the most likely descendants regarding their wishes, taking into account the possibility of multiple human remains, as provided in Public Resources Code section 5097.98. Work may resume if NAHC is unable to identify a descendant or the descendant fails to make a recommendation.
108. The responsible party shall instruct all persons who will be completing any ground disturbing activity at a worksite to comply with the conditions set forth in this Agreement and shall inspect each work site before, during, and after completion of any ground-disturbing activity at the work site.
109. All temporary construction roads shall be decommissioned and recontoured, unless the Department specifies otherwise in this Agreement. In addition, road surfaces shall be de-compacted and revegetated.

K. Monitoring

110. The responsible party shall conduct project monitoring prior to and after implementation to track the status of Agreement conditions and to verify that the measures required by the Agreement are being implemented as specified.
111. The responsible party shall complete all checklists and data sheets provided by the Department with this Agreement.
112. The responsible party shall conduct photo monitoring pursuant to the methodology and format provided by the Department with this Agreement and incorporated into this Agreement by reference.
113. The responsible party shall provide to the Department a draft Annual Monitoring Report by January 30 each year that covers the period of time from January 1 to December 31 of the previous year for each year the Agreement is effective. The responsible party

shall submit a final report to the Department within thirty (30) days of approval of the draft annual report.

114. The annual monitoring report shall include at the minimum:
- a. agreement number;
  - b. type of covered activity the project addresses;
  - c. project name (if appropriate);
  - d. purpose and summary of covered projects completed;
  - e. project implementation start and end-dates;
  - f. whether the project is on-going or completed;
  - g. detailed description of the results of monitoring completed;
  - h. summary of problems encountered and proposed modifications in project implementation to correct them; and
  - i. all monitoring data, copies of data sheets, checklists, digital images, photographs, and other monitoring information in digital and hardcopy format.